

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
PECOS DIVISION

UNITED STATES OF AMERICA,	)	Case No. 4:20-CR-000388-DC
	)	
Plaintiff,	)	Appeal No. 22-50987
	)	
vs.	)	<b>**VIA ZOOM VIDEOCONFERENCE**</b>
	)	
THOMAS SCOTT PERKINS,	)	
	)	
Defendant.	)	Friday, June 24, 2022
	)	10:14 A.M.

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TRANSCRIPT OF STATUS CONFERENCE  
**BEFORE THE HONORABLE DAVID B. FANNIN**  
**UNITED STATES MAGISTRATE JUDGE**

APPEARANCES VIA ZOOM VIDEOCONFERENCE:

For the Plaintiff: United States Attorney's Office  
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For the Defendant: Office of the Federal Public Defender  
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Liberty Transcripts  
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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

Alpine, Texas - Friday, June 24, 2022

(10:14 a.m.)

P R O C E E D I N G S

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THE CLERK: The Court calls PE:20-CR-388, United States of America versus Thomas Scott Perkins.

MR. CAYTON: Kevin Cayton on behalf of the Government.

MS. BATALLER-SCHNEIDER: Good morning, Your Honor. Elyse Bataller for Mr. Perkins.

THE COURT: Good morning.

And we are here today on a status conference. I think Judge Counts found that Mr. Perkins is competent to proceed in this case. And Mr. Perkins has a trial date of July 18 and what would be a plea deadline of June 29. And my last notation on this case is there was -- this is one of those voluminous discovery cases.

And, Ms. Bataller, are you able to tell me whether the defense has received the discovery, the complete discovery in this case?

MS. BATALLER-SCHNEIDER: My understanding, Your Honor, is that we have all the discovery.

THE COURT: Okay. So is this case going to be ready for trial on the 18th?

MS. BATALLER-SCHNEIDER: Yes, Your Honor. We will be ready for trial on the 18th. There were some questions about scheduling just to make sure that it will be the 18th just

1 because we're coming from out of town and --

2 THE COURT: I understand.

3 MS. BATALLER-SCHNEIDER: -- the uncertainty it brings  
4 us.

5 THE COURT: Perhaps we'll -- and is the Government  
6 going to be ready for trial on the 18th?

7 MR. CAYTON: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. CAYTON: The anticipation is two and a half days.

10 THE COURT: Okay. And, Ms. Bataller, in terms of your  
11 scheduling, the Government has estimated two to two and a half  
12 days for their case. Will you have -- what is your estimate as  
13 far as length of trial goes?

14 MS. BATALLER-SCHNEIDER: Your Honor, I can't imagine  
15 that our case would last more than a day.

16 THE COURT: Okay.

17 MS. BATALLER-SCHNEIDER: Probably a half day to a day.

18 THE COURT: Okay. And let me ask you, have we  
19 exhausted the possibility of this case being resolved prior to  
20 trial?

21 MS. BATALLER-SCHNEIDER: I believe so, Your Honor.

22 THE COURT: Okay. And have you and Mr. Perkins  
23 discussed what happens at a trial as far as the loss of  
24 acceptance of responsibility reports and I don't know if the  
25 Government has made any additional concessions as far as that

1 goes.

2 MS. BATALLER-SCHNEIDER: Yes, Your Honor. We haven't  
3 discussed all that with Mr. Perkins, but we'll be talking to him  
4 a lot within the next month, and we will go over that again.

5 THE COURT: Okay. And, Mr. Perkins, are you able to  
6 hear me, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I think that you have indicated that you  
9 wish to exercise your right to go to trial in this case and, of  
10 course, that is a right that you have. And no one's trying to  
11 take that away from you.

12 One of the things that you need to understand, however,  
13 is that in federal court, and I've seen a statistic in the last  
14 couple of months that there is a -- the Government has a  
15 conviction rate in cases that go to trial of somewhere north of  
16 98 percent of the cases.

17 That means that there are a lot of convictions in  
18 federal court, and there are very few not-guilties in federal  
19 court. And so do you understand that going to trial is not -- I  
20 don't want to tell you that it's a losing proposition but  
21 generally most defendants that go to trial are convicted.

22 And I'm not taking anything away from your lawyers  
23 because you have some very good lawyers and they are working very  
24 hard to represent you. But the facts are the facts.

25 And so do you understand this, Mr. Perkins?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you -- is it still your intention  
3 you wish to exercise your right to go to trial in your case?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Are there any pending motions in  
6 this case that I need to make the district judge aware of?

7 MS. BATALLER-SCHNEIDER: I don't believe so, Your  
8 Honor.

9 THE COURT: Okay.

10 MS. BATALLER-SCHNEIDER: I just want to make one note  
11 if I could. We noticed that Counts 2 through 10 on the  
12 indictment, the charge listed was 18 U.S.C. 2252(a)(5)(B). I  
13 believe that what they're trying to cite is 2252A(a)(5)(B), so  
14 that's a mistake on the indictment.

15 I don't want it to delay the trial because obviously  
16 they could just supersede the indictment, but if that could be  
17 fixed. I just wanted to bring that to the Government's  
18 attention.

19 MR. CAYTON: Your Honor, may I ask defense counsel just  
20 to state that one more time so I can make sure I annotate it and  
21 then I can pass that on to Mr. Greenbaum?

22 THE COURT: Yes.

23 MS. BATALLER-SCHNEIDER: Absolutely.

24 So Counts 2 through 10, it's cited as 18 U.S.C.  
25 2252(a)(5)(B). I believe there's just an A, a capital "A"

1 missing after the 2252.

2 THE COURT: And did you get that, Mr. Kennedy?

3 MR. CAYTON: I did, Your Honor. Thank you.

4 THE COURT: Okay.

5 MS. BATALLER-SCHNEIDER: Thank you.

6 THE COURT: And so anyway then, I will tell -- I'll  
7 make a report to Judge Counts that this case is ready for trial.  
8 There are no outstanding discovery issues, that the parties  
9 anticipate two-, two-and-a-half, three-day trial in this case,  
10 and that I don't know how Judge Counts will do it in this case.

11 But typically, if he has more than a number of trials,  
12 he uses the magistrate to do the jury selection portion of the  
13 trial and that then -- and, again, that's usually the Friday  
14 before what in this case would be I guess -- would this be a  
15 Tuesday trial? No.

16 When is the 18th? What is the 18th?

17 MS. BATALLER-SCHNEIDER: I believe it's a Monday, Your  
18 Honor.

19 THE COURT: Okay. So it would be the Friday before the  
20 Monday trial is typically what he would request. And so --

21 MS. BATALLER-SCHNEIDER: Okay.

22 THE COURT: -- and if that's the case, then you'll  
23 receive an order from the Court to that effect. And I give each  
24 side 15 minutes to ask the jury panel questions that you think  
25 that I haven't already asked or you think are important that you

1 want to emphasize.

2 And that's all I can think of. So we will -- this case  
3 will be number one on the jury trial docket for next month.

4 MR. CARLIN: Judge, if I can -- maybe you have some  
5 better insights than I do. If we do get to -- I know we're going  
6 to be doing four jury trials by the end of next week in this  
7 courtroom. If you find out that we're going to have two or three  
8 more besides this, is there a possibility that we'll be doing  
9 this on the week of the 11th?

10 THE COURT: The week of --

11 MR. CARLIN: Yeah, the week of July -- moving it up a  
12 week ahead of time if we get backed up with three trials.

13 THE COURT: I'm going to guess that -- I'm looking over  
14 what we have left, and it looks to me like -- and Ms. Chozet will  
15 be able to tell us about the case in the next case. But this  
16 looks like maybe the only case that's going to go to trial, has a  
17 realistic possibility of going to trial.

18 Do y'all have better information than I do?

19 MR. KENNEDY: I don't think it's the only case  
20 potentially for trial. The next case on the docket today is set  
21 for trial. That may or may not happen based on our next  
22 conversation, but --

23 THE COURT: Yeah. I think those are the only two cases  
24 that are --

25 MR. KENNEDY: Correct, Your Honor.

1 THE COURT: -- that look --

2 MR. CARLIN: That realistically would go. So it looks  
3 like the 18th is going to be the solid date, Your Honor.

4 THE COURT: I think that's going to be a solid date.

5 MR. CARLIN: Okay.

6 MS. BATALLER-SCHNEIDER: Thank you.

7 THE COURT: And Ms. Chozet will be able to help us on  
8 the next case. But I think we can -- and so I think more likely  
9 than not, Mr. Carlin, is that given the number of witnesses that  
10 will be testifying in this case, Judge Counts will probably give  
11 this case first consideration as far as the 18th goes. And then  
12 the next trial would be either later that same week or the  
13 following week.

14 MR. CARLIN: Yes, sir.

15 THE COURT: Because I know that he also has trials in  
16 Midland, as well.

17 So thank you all.

18 MS. BATALLER-SCHNEIDER: Thank you.

19 (Proceedings adjourned at 10:25 a.m.)

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C E R T I F I C A T E

I, DIPTI PATEL, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

*Dipti Patel*

DIPTI PATEL, CET-997

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Date: January 3, 2023